IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 7 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVNA NALINKANT NANAVATI

Versus

COMMISSIONER OF GIFT TAX

Appearance:
MR JP SHAH for Applicant.
MR BB NAIK AND MR.M.H.JOSHI for
MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: /01/2002

CAV.JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question for the opinion of this Court under the Gift Tax Act,1958

(hereinafter referred to as "the Act") :

"Whether, on the facts and in the circumstances of the case, the assessee was rightly taxed under the Gift-tax Act, 1958 in respect of the shares of the value of Rs.52,744/- given to Bhavana Nalinkant Trust ?"

2 The applicant-assessee is an individual. The assessment year is 1980-81 and the relevant previous year ended on 31/3/1980. On 19/2/1979 the assessee created irrevocable trust with initial sum of Rs.1,000/- by executing a deed of trust known as "Bhavana Nalinkant Trust" (hereinafter referred to as 'the Trust'). On 22/2/1979 the assessee addressed a letter to the trustees of the Trust informing that she was gifting certain shares which were of her individual ownership. Along with the said letter the transfer forms duly completed and signed accompanied by the share certificates were also forwarded to the trustees.

3. It appears that the market value of the shares passed on to the trustees on 22/2/1979 was Rs.52,744/-. The assessee filed a gift tax return on 30/6/1980 showing taxable gift at Rs.Nil. However, the Gift Tax Officer after allowing statutory exemption of Rs.5,000/- worked out the taxable gift at Rs.47,744/-. The Gift Tax Officer was of the opinion that as the ownership over the corpus of the trust funds vested with the trustees, the assessee's claim that the donor and the donee were the same person was not acceptable. It is pertinent to note that the assessee, who was settlor of the trust was the sole beneficiary of the trust as per the trust deed.

4 The assessee went in appeal before the Appellate Assistant Commissioner but did not succeed. According to the appellate authority if the assessee's plea that the donor and donee were the same person was accepted, the very purpose of creation of trust would be frustrated and the trust would be invalid. Alternatively, the appellate authority held that though the donor and the beneficiary may be the same individual, yet they were different persons acting in different capacities. The assessee preferred Second Appeal before the Tribunal. The Tribunal for the reasons stated in its order held that on plain reading of clause 4 of the deed of trust it was apparent that the trustees had power to accelerate the date of distribution of the trust fund and the said clause further provides that the trustees had a power to eliminate the assessee altogether as a beneficiary at any

time before the date of distribution. The Tribunal therefore held that the assessee was not entitled to invoke the doctrine of self to self and as the assessee and the trust were two distinct and different persons the provisions of the Act, with special reference to the definitions 'donee', 'donor', 'gift' and 'transfer of property' contained in Section 2 of the Act, stood attracted. It is out of this order of the Tribunal that the aforesaid question has arisen.

5 Mr.J.P.Shah, learned Counsel for the applicant-assessee submitted that the Tribunal had fallen into error while interpreting clause (4) of the deed of trust relating to distribution, that the assessee continued to be the owner of the assets in question in as much as the assessee was liable to income tax in relation to income arising from the said assets and also liable to wealth tax in relation to the said assets. It was further submitted that the provisions of the Gift Tax Act had to be read and construed along with the Income Tax Act,1961 and the Wealth Tax Act,1957, because it was an integrated scheme of the taxation which operated as a self contained code. It was further submitted that though the trustees may be treated as legal owners of the assets in question, for the purpose of ascertaining liability to tax, beneficial ownership had to be taken into consideration and such beneficial ownership was always subject to the terms of the trust deed. In support of the aforesaid contention Mr.Shah referred to various provisions of the Indian Trust Act,1882 (for short 'the Trust Act'), as well as various decisions of High Courts including this Court and Supreme Court.

6 As against this, learned Standing Counsel Shri B.B.Naik and Shri M.H.Joshi contended that the Tribunal's order does not call for any interference in view of the fact that by virtue of provisions of Section 3 of the Trust Act, the Trustee became the legal owner of the assets in question as there was transfer of those assets from the settlor to the trustees. It was further submitted that the right of beneficiary under the trust is distinct from ownership and this was apparent from the fact that there was difference between legal owner and beneficial owner. That a beneficiary under the trust was only entitled to the beneficial interest and such beneficial interest could be exercised against a trustee as owner of the trust property. Furthermore, it was contended that even in a case like the present one, where the settlor is also sole beneficiary, the settlor would have no right in the legal ownership of the property. That provision of Section 3 of the Act fasten charge of

gift and the definition of the term 'gift` was distinct from the one given in Section 122 of the Transfer of Property Act,1882 . That though under the Transfer of Property Act acceptance was necessary the definition of gift under Section 2(xii) of the Act did not require that there should be specific acceptance by a donee. Further contention was raised to the effect that the trust was an obligation annexed to the ownership and eventhough the trustee may have no beneficial interest in the trust property, it could be treated as onerous gift which was known to be valid in law. It was further submitted that once a transaction was shown to come within four corners of definition of gift there was no equity, no intendment as regards the purpose and the concepts of ownership or 'belonging to' were not necessary for the purpose of the Act. The learned Counsel also referred to and relied upon various decisions of the Apex Court and the Privy Council and various High Courts including this Court.

7 The relevant provisions of the Act and the Trust Act as well as the relevant clauses of the trust deed as are relevant for the purpose of present controversy are extracted herein below :

GIFT TAX ACT,1958.
Definitions.

2. In this Act, unless the context otherwise requires, -

(viii) 'donee' means any person who acquires any property under a gift, and, where a gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary;

(ix) 'donor` means any person who makes gift;

xxx xxx xxx

(xii) 'gift` means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and [includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section]

(xxiv) 'transfer of property' means any disposition, conveyance, assignment,

settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes -

(a) the creation of trust in property;"

INDIAN TRUSTS ACT,1882.

"3. Interpretation clause - 'Trust'

- A 'trust` is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another , or of another and the owner ;

the person who reposes or declares the confidence is called the 'author of the trust`; the person who accepts the confidence is called the 'trustee'; the person for whose benefit the confidence is accepted is called the 'beneficiary`; the subject-matter of the trust is called 'trust-property` or 'trust-money` : the 'beneficial interest` or 'interest` of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the 'instrument of trust`;"

Trust Deed :

2."(b) The trustees shall give the entire income for a period of thirty years to the settlor from the date of execution of these presents or till the death of Settlor whichever period expires earlier.

(c) On the date of distribution to hold the Trust fund and the investments for the time being representing the Trust fund upon trust for the Settlor and if the Settlor is not alive for children of the Settlor as may then be living in equal shares.

The date of distribution shall arrive at the end of the period of 30 years and in case the Settlor of the trust expires earlier than the said period of 30 years, the period of distribution shall arrive on the date of the death of the

Settlor.

(d) On the date of distribution none of the beneficiary mentioned in clause (c) above are living to hold the Trust fund and the investments for the time being representing the Trust fund upon trust for brother of the Settlor Hemal Nalinkant, Sister of the Settlor Bhargavi Nalinkant and mother of the Settlor Pramilaben Nalinkant in equal shares.

(e) On the date of distribution if none of the beneficiaries mentioned in clause (d) above are living to hold the Trust fund and the investments for the time being representing the Trust fund upon Trust for the children of brother of the Settlor Hemal Nalinkant and children of the sister of the Settlor Bhargavi Nalinkant per stirpes.

4 The Trustees shall at any time before the date of distribution be entitled to accelerate the date of distribution of the Trust fund or any part thereof and in the event of the Trustees deciding to do so, the Trusts referred to in sub-clause (b) as the case may be shall forthwith cease and the Trusts contained in sub-clause (c), (d) or (e) as the case may be shall become operative to the extent of the Trust fund or any part thereof to which the decision of the Trustees applies".

8 On consideration of the various definitions of the Act, it is clear that a gift for the purpose of the Act means transfer of any property made voluntarily and without consideration by one person to another. The definition of transfer of property takes within its sweep the creation of a trust in property. The donor is a person who makes gift and the donee is a person who acquires any property under a gift and includes both the trustee and the beneficiary where a gift is made to a trustee for the benefit of another person. The definition of 'donee` specifically states that where a gift is made to a trustee for the benefit of another person includes both the trustee and the beneficiary , meaning thereby that the trustee does not receive the

property for his absolute use but receives the same for the benefit of another person and such another person when read in context of a trust and as distinguished from the trustee shall have to be the beneficiary. Therefore, it appears that where the donor is the settlor of a trust and beneficiary is the sole beneficiary under deed of trust the donee would be both the trustee and such beneficiary, and the trustee would hold the gifted property for the benefit of such beneficiary. The Act provides an inherent indication in this regard when one considers Sections like 21.A & 29 which fasten liability to tax on donee in certain situations. However, this position will also have to be examined in light of the definition clause under the Trust Act.

9. Section 3 of the Trust Act requires that the creation of a trust is reposing of confidence or in other words it is an obligation arising out of confidence reposed by the settlor - owner of a property in the person to whom the properties are entrusted for the benefit of another. In other words a fiduciary relationship comes into existence between the trustee and the beneficiary. It is an obligation relating exclusively to property. The ownership of trust property has to be for the benefit of a person or more than one person of whom the settlor may himself be one but never for the benefit of an owner alone viz. the trustee. There cannot be a case where the creator of the trust would also be the trustee and also the sole beneficiary, because in such cases a man cannot enforce a trust against himself.

10. The question therefore that would arise is, can there be a trust where the settlor or creator of the trust and the sole beneficiary under the trust are one and the same person but the trustee or the trustees are distinct from such settlor or the beneficiary. This is the situation in the present case. If the answer is yes, what is the obligation that the trustee is required to discharge or what is the obligation which such a trustee is fastened with. Under the Trust Act the obligation is attached with the property and such obligation is for the purpose of administration and management of the property in question for the benefit of another viz. beneficiary. The performance of such an obligation necessarily implies that the trustee has some control over the property which is the subject of the trust, or otherwise the trustee would be unable to deal with said property for the benefit of the beneficiary. To put it in other words the ownership of a trust is a matter of form rather than of substance. The property may belong to the beneficiary,

but for obligation and use of it, the property vests in trust. The trustee is under an obligation to use the ownership rights for the benefit of those to whom the ownership rights really belong i.e. beneficiary.

11. Can this concept under the general law of trust be permitted to prevail upon for the purpose of ascertaining liability to tax as the revenue requires, or is it the position that the revenue law should be permitted to prevail over the position in general law as the assessee would like the Court to accept. In our opinion, the position lies somewhere in between two extremes canvassed by both the sides and would be based on a harmonious reading of provisions of both the Act and the Trust Act.

12. As can be seen from the provisions of the Trust Deed the trustees held the property for the benefit of the sole beneficiary viz. the assessee, who is the settlor. The trustees are bound to give the entire income from the trust property for a period of 30 years to the settlor from the date of the execution of the deed of trust or till death of settlor whichever period expires earlier. As regards the corpus or the trust fund the stipulation in the deed of trust is that the fund has to be held by the trustees for the settlor on the date of distribution. If the settlor is not alive on the date of distribution then various contingencies are provided. Firstly, if the settlor is not alive on the date of distribution to her children in equal shares; secondly, if neither the settlor nor her children are alive on the date of distribution to the brother, sister and mother of the settlor in equal shares; and thirdly, if on the date of distribution none of the aforementioned are alive to the children of the brother and children of the sister per stirpes. The date of distribution is denoted to be the end of period of 30 years and in case of death of settlor prior to that date. However, what has weighed mainly with the Tribunal is clause 4 of the deed of trust which provides that the trustee may accelerate date of distribution before the date of distribution specified, but the Tribunal has fallen into error in reading later part of the said clause when it provides that the trust referred to in sub-clause (b) shall forthwith cease i.e. when the trustee decide to accelerate date of distribution and the trust contained in sub-clauses (c), (d) or (e) as the case may be shall become operative. Therefore, it appears that the Tribunal took into consideration the fact that on acceleration of date of distribution sub-clause (b) providing for giving entire income to settlor would cease and thus the property would

not remain with settlor. It appears that the Tribunal equated income with the property in question and fell into error. In fact, sub-clause (c) specifically states that on the date of distribution the entire trust fund shall pass on to the settlor and only if the settlor is not alive other contingencies mentioned therein would come into operation. Hence, even on acceleration of date of distribution the same position would come about namely, the corpus would go to settlor if she is alive. The reasoning and conclusion of the Tribunal based on the interpretation of this clause of the trust deed is not correct in law.

13. It is true that the legal title to the trust property stands transferred by the assessee to the trustees, but that has no effect of creating any interest in the trust property in favour of the trustees. It is not possible to hold that the right which a beneficiary gets under the trust is de hors the interest in the trust property. If that were not so a beneficiary would never be liable to wealth tax. The fundamental rights attributed to ownership would be the right to possess, enjoy and transfer the property or its income. In law the trustee has no power to either enjoy property or its income or transfer the property for his own benefit. Though he undoubtedly comes into possession of the property, the possession is for the benefit of another i.e. the beneficiary. The trust is, thus seen, merely a conduit pipe or a vehicle by means of which the donor passes on the interest which the donor had in the trust property in favour of beneficiary. The effect is that a trust is a gift of trust property or interest in the trust property to the beneficiary.

14. The Apex Court was called upon to deal with, in case of State Bank of India vs. Special Secretary Land, 1995 Supp(4) SCC 30, a situation where State Bank of India was executor/trustee of certain properties under wills of individuals who were owners of the said properties. Some of the properties were vacant lands. A question arose as to whether the provisions of Urban Land (Ceiling and Regulations) Act,1976 could be applicable or not and whether exemption under section 19 of the said Act would be available to the Bank in relation to land of such private trusts. Dealing with the provisions of the Trust Act and its interaction with provisions of the Land Ceiling Act as well as State Bank of India Act, the Court held that :

"7. 'Vacant land held' under Section 19 of the Act by the State Bank of India must be vacant land owned or possessed as owner thereof because

> of the definition clause (1) of Section 2 of the Act. However, it is difficult for us to think that such owning or possessing as owner of the vacant land by the State Bank of India, could be regarded as referable to any land other than that vacant land to be owned or acquired by it under sub-section (6) of Section 34 of State Bank of India Act for the purpose of providing buildings or other accommodation in which to carry on the business of the State or for providing residences for its officers and other employees. It is equally difficult for us to think that the vacant land held, that is , owned or possessed as owner by any other bank specified in Section 19 of the Act is not its owner with all the rights of ownership including the right of disposal vested in it. Therefore, when the Bank holds the trust properties in due course of executing and administering the trust for the benefit of beneficiaries, it does not hold such property 'as the owner' or 'possess as owner` envisaged under the Act. In our considered view, no bank holds trust properties as owner envisaged under Section 19 of the Act. Thus, a bank even though regarded under Trusts Act as the owner of trust property vacant land for the purpose of executing or administering a trust, it cannot hold a trust property-vacant land as its owner or possessed as owner as could make that land eligible for the benefit of exemption envisaged under Section 19 of the Act xx xx xxx"

Applying the aforesaid ratio : though the trustees stand possessed of the trust property, the same is only for its administration and the beneficial ownership of the settlor remains with her as the sole beneficiary. Thus, there is no liability to gift tax.

15. To summarise, though there is a transfer of property from the creator of the trust to the trustee, such transfer is without consideration, resulting in vesting of the property legally in hands of the trustee, yet for the purpose of the provisions of the Act, it would not amount to a gift liable to tax under the Act in view of the fact that the trustee holds the property for the benefit of the beneficiary who in this case is the creator of the trust. In absence of any other beneficiary it cannot be stated that effectively any interest in the property has passed. In other words, the necessary attributes of ownership remain unfulfilled i.e. the ownership which the settlor had remains with her

though in the capacity as the sole beneficiary. Hence on facts, taking into consideration the terms of the trust deed and in law it is not possible to hold that the Tribunal was right when it held that the assessee was rightly taxed under the Gift Tax Act,1958 in respect of the shares of the value of Rs.52,744/- given to Bhavna Nalinkant Trust.

16. We have considered various judicial authorities cited before us by both the sides, even if the same might not have been specifically referred to and discussed in the judgment.

17. The question referred to us is therefore answered in the negative i.e. in favour of the assessee and against the revenue.

18. The reference stands disposed of accordingly with no order as to costs.

(B.C.Patel,J) (D.A.Mehta, J)

m.m.bhatt